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VIA HAND DELIVERY

Filed electronically in
TRA Docket Room
09/26/11

Hon. Kenneth C. Hill, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of Access Point, Inc. against AT&T Tennessee and AT&T Long
Distance Service for Unreasonable and Anti-Competitive Conduct*
Docket No. 11-00141

Dear Chairman Hill:

Enclosed are the original and four copies of the Answer of AT&T in the referenced matter.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "Joelle Phillips".

Joelle Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of Access Point, Inc. against AT&T Tennessee and AT&T Long Distance Service for Unreasonable and Anti-Competitive Conduct*

Docket No. 11-00141

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, LLC dba AT&T TENNESSEE AND
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC**

BellSouth Telecommunications, LLC dba AT&T Tennessee and AT&T Communications of the South Central States, LLC (erroneously named in the complaint as AT&T Long Distance Services) (collectively “AT&T”) file this *Answer* and respectfully respond as follows:

Introduction

On August 25, 2011, Access Point, Inc (“Access Point”) filed a complaint in which it purports to state a claim against AT&T relating to the long distance rates that AT&T charged not to Access Point, but instead to one of Access Point’s local service end users on whose behalf Access Point ordered the AT&T long distance service. Access Point admits that it ordered this long distance service from AT&T on behalf of the end user, and it admits that AT&T provided exactly the service Access Point ordered for the end user. Access Point further admits that the real problem is that Access Point (not AT&T) erroneously ordered a different, more expensive, service than it intended to order for the end user.¹ Rather than accepting responsibility for its

¹In light of this admission, it is easy to understand why the end user has not filed a complaint against AT&T – it was Access Point’s mistake that caused the end user to pay more than it expected to pay, and it is Access Point against whom any complaint by the end user appropriately would be directed.

own error, however, Access Point is asking the Tennessee Regulatory Authority (“TRA”) to find that AT&T has somehow acted unlawfully by charging the end user the lawful and unregulated long distance rates for the service that Access Point specifically selected on behalf of the end user. Access Point’s request is meritless and should be summarily rejected.

Summary of Complaint and Accompanying Affidavits

According to the Complaint and the accompanying affidavits, Access Point contracted with Matheson Tri-Gas (“Matheson”) to provide both local and long distance services. Access Point contends that it mistakenly “switched the long distance service of Matheson Tri-Gas to the AT&T network instead of to another carrier.”²

Access Point alleges that the price AT&T charged for the long distance service was “unreasonable.”³ Access Point makes no allegation, however, that the price AT&T charged violated any contract with either Access Point or the end user or that the price AT&T charged conflicts with any tariff or regulatory rule or order.

Access Point does not allege that AT&T did anything other than deliver the service exactly as it was ordered. Instead Access Point’s complaint is that the price of the service that Access Point selected is higher than Access Point believes to be reasonable. Access Point was under no obligation to select AT&T as the long distance provider for its end user. Likewise, Access Point was free to select any of the long distance plans AT&T offers, many of which provide service at lower per-minute prices.

² Affidavit of Richard Brown, Ex 2 to Complaint.

³ Affidavit of Richard Brown, Ex 2 to Complaint.

Access Point's complaint contains no citation to any law or regulatory rule under which these allegations, even if they were accepted at face value, could constitute "anticompetitive" or otherwise illegal conduct.

Applicable Law

The TRA has no jurisdiction over complaints relating to telecommunications services provided to business customers like Matheson by Market Regulated companies like AT&T.⁴ Similarly, the TRA has no jurisdiction to establish, change, or otherwise regulate the retail rates for long distance service.⁵ Faced with these plain limits on the TRA's jurisdiction, Access Point seeks to manufacture a claim of "anticompetitive" conduct. In doing so, however, Access Point impermissibly asks the TRA to do indirectly what it cannot do directly – order AT&T to modify the retail rate it charged a business customer for long distance service.

Even if that were not the case, Access Point's claims must fail as a matter of law. Access Point ordered AT&T service for an end user customer,⁶ AT&T provided exactly the service Access Point ordered for that end user customer, and AT&T correctly charged that end user customer the published price for the service Access Point ordered. Under no stretch of the

⁴ T.C.A. § 65-5-109 (preserving TRA complaint authority only in the context of residential local service).

⁵ This has been true under Tennessee law for more than a decade. In 1995, the Tennessee General Assembly opened the market to local competition and specifically exempted Interexchange Carriers from rate regulation. T.C.A. § 65-4-101(6)(I) (interexchange carrier is not a public utility) With respect to intraLATA toll service, the TRA long ago recognized that prices for these services are set by the market. In fact, the TRA ruled on June 6, 2006, that intraLATA toll service was so competitive that it need not be regulated pursuant to § 65-5-109. Counsel for Access Point participated in that docket, in which all parties conceded that toll service was competitive. On behalf of a group of CLECs, counsel noted during oral argument, "We don't disagree that this is a highly competitive market, the intraLATA toll market. So is the interLATA toll market, and that's why we did not oppose BellSouth's request for relief." Transcript of Oral Argument, August 30, 2004, at 11-12, *Petition of BellSouth Telecommunications, Inc. for Exemption of Certain Services*, Docket No. 03-00391 (quoting Mr. Walker representing SECCA).

⁶ Access Point, of course, could have obtained service for Matheson from any of the other 159 providers offering IXC service in Tennessee.

imagination can this be construed as “anticompetitive conduct.” In fact, Access Point’s conduct – ordering the wrong service for its end user, apparently refusing to compensate the end user for its error, and instead seeking to have one of its competitors do so – is far closer to “anticompetitive conduct” than anything AT&T is alleged to have done.

Response to Numbered Paragraphs in Access Point’s Complaint

In response to the numbered paragraphs of Access Point’s *Complaint*, AT&T states as follows:

1. AT&T is without sufficient knowledge to admit or deny the allegations of Paragraph 1.
2. AT&T admits that BellSouth Telecommunications LLC dba AT&T Tennessee is an incumbent local exchange carrier operating in Tennessee as a market-regulated company pursuant to T.C.A. § 65-5-109. The remaining allegations of Paragraph 2 are hereby denied.
3. AT&T admits that AT&T Communications of the South Central States, LLC is a competitive local exchange carrier operating as a market-regulated company pursuant to T.C.A. § 65-5-109. The remaining allegations of Paragraph 3 are hereby denied.
4. AT&T admits that AT&T Tennessee and AT&T Communications of the South Central States, LLC are affiliated companies. The remaining allegations of Paragraph 4 are hereby denied.
5. AT&T denies the allegations of Paragraph 5.
6. The statements in Paragraph 6 are not factual allegations that can be admitted or denied.

7. AT&T is without sufficient knowledge to admit or deny the allegations of Paragraph 7.

8. AT&T is without sufficient knowledge to admit or deny the allegations of Paragraph 8.

9. AT&T admits that during the period from December 2010 through February 2011 it charged Matheson long distance rates for interstate usage as set forth in http://serviceguide.att.com/ABS/ext/doc/BLD_ER_OS1WEB3.XLS.xls. AT&T admits that during the period from December 2010 through February 2011 it charged Matheson long distance rates for intrastate usage as set forth in http://serviceguide.att.com/tariff/business/ext/files/TNCNSSGPLM_c503.pdf#page=1. The remaining allegations of Paragraph 9 are hereby denied.

10. AT&T admits that during the period from December 2010 through February 2011 it charged Matheson long distance rates for interstate usage as set forth in http://serviceguide.att.com/ABS/ext/doc/BLD_ER_OS1WEB3.XLS.xls. AT&T admits that during the period from December 2010 through February 2011 it charged Matheson long distance rates for intrastate usage as set forth in http://serviceguide.att.com/tariff/business/ext/files/TNCNSSGPLM_c503.pdf#page=1. The remaining allegations of Paragraph 10 are hereby denied

11. AT&T denies the allegations of Paragraph 11.

12. AT&T admits that it investigated Access Point's allegations regarding the charges to Matheson and determined that the charges were the correct charges for the service ordered

on behalf of Matheson by Access Point. The remaining allegations of Paragraph 12 are hereby denied.

13. AT&T admits that it investigated Access Point's allegations regarding the charges to Matheson and determined that the charges were the correct charges for the service ordered on behalf of Matheson by Access Point. The remaining allegations of Paragraph 13 are hereby denied.

14. AT&T denies the allegations of Paragraph 14.

15. AT&T admits the allegations of Paragraph 15.

16. AT&T denies the allegations of Paragraph 16.

17. AT&T denies the allegations of Paragraph 17.

18. AT&T denies the allegations of Paragraph 18.

19. The statements in paragraph 19 are not factual allegations. AT&T opposes the relief requested in that paragraph.

20. The statements in paragraph 20 are not factual allegations. AT&T opposes the relief requested in that paragraph.

21. The statements in paragraph 21 are not factual allegations. AT&T opposes the relief requested in that paragraph.

Any and all remaining allegations in Access Point's Complaint not specifically addressed herein are hereby denied.

Conclusion

For the reasons discussed above, AT&T respectfully requests that the TRA dismiss the complaint or, in the alternative, find that Access Point is not entitled to any relief.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee and AT&T
COMMUNICATIONS OF THE SOUTH CENTRAL
STATES, LLC

By: 

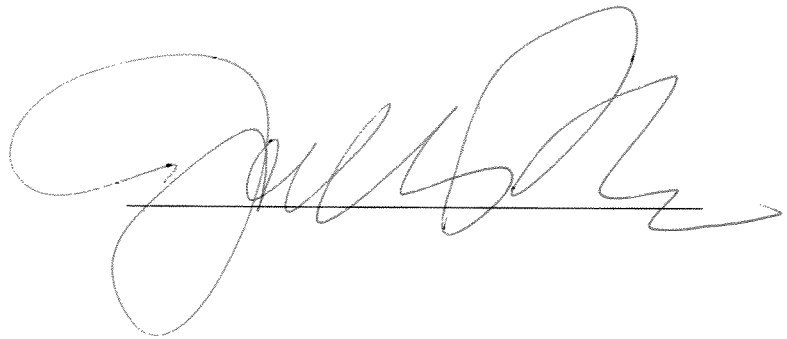
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Attorney for AT&T

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2011, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read "H. Walker", is written over a horizontal line.